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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/737,306

12/16/2003

Robert Haines Turner

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27752

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06/12/2008

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EXAMINER

JOHNSON, JENNA LEIGH

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/737,306	Applicant(s) TURNER ET AL.	
	Examiner Jenna-Leigh Johnson	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,4 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/28/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on February 28, 2008 has been entered.

2. Claims 3, 4, and 11 - 16 are pending.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 4, 11 - 13, and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cree et al. (5,792,404).

Cree et al. discloses a nonwoven web which comprises numerous discontinuities on the surface of the fabric formed by running the nonwoven web through embossing rollers as shown in Figure 7 (column 3, lines 1 - 55). The nonwoven can be a meltblown, spunbond, or bonded carded web comprising cotton, rayon, polypropylene, polyester, polyethylene, or bicomponent fibers and blends thereof (column 5, lines

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8 - 17). The meltblown and meltblown webs are formed from randomly oriented fibers. As shown in Figure 7A the nonwoven fabric comprises a first region and a second region wherein the second region comprises discontinuities that extend away from the first region in the Z direction with an open region within the plane of the fabric. The discontinuities are uniformly spaced throughout the surface.

While Cree et al. fails to explicitly teach that the discontinuities include fibers which are broken from and not extending from the first regions, Cree et al. discloses embossing the nonwoven fabric with the same grooved roller structure as taught by the Applicant (see Applicant's Figure 7). Additionally, the disclosure teaches that the broken fibers are the result of forcing the fibers out of the plane of the fabric to form the discontinuity or due to producing the discontinuities in a fabric comprising staple fibers (Specification, page 7, lines 5 - 23). Thus, the composite taught by Cree et al. would inherently contain some broken fibers in the discontinuity regions since the discontinuities are formed by the same process as that taught by the applicant which the applicant discloses breaks some of the fibers. Further, Cree et al. discloses that the nonwoven fabric can be made with staple fibers such as cotton fibers which the applicant states creates the broken fibers as well. Thus, it is reasonable to presume that said limitations are inherent to the invention. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed broken fibers would obviously have been provided by the process disclosed by Cree et al. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 3, 4, and 11 - 13 are rejected.

Claim 16 is rejected with claim 11 since it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the recitation that the nonwoven is used as a wipe does not distinguish the claimed nonwoven from the prior art.

Claim Rejections - 35 USC § 103

6. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cree et al.

The features of Cree et al. have been set forth above. Cree et al. fails to teach the shape of the fibers used in the nonwoven fabric. However, various shaped fibers including non-round fibers such as flat or multilobal fibers, which produce different properties in the final fabric, are well known in the art. Thus, it would have been obvious to one having ordinary skill in the art that various non-round shaped fibers could be used in the nonwoven fabric taught by Cree et al. to modify or optimize the properties of the final fabric structure. Further, it has been held that a change of shape is generally recognized as being within the ordinary level of skill in the art. *In re Dailey*, 357 F.2nd 669, 149 USPQ 1966. Thus, claim 14 is rejected.

Further, Cree et al. fails to teach that the composite has ten discontinuities per centimeter. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the number of discontinuities, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). Thus, claim 15 is rejected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlj
June 9, 2008

/Jenna-Leigh Johnson/
Primary Examiner, Art Unit 1794